

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

MICHAEL CETTA, INC. d/b/a
SPARKS RESTAURANT

and

CASES 02-CA-142626 and 02-CA-144852

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 342

MOTION TO POSTPONE COMPLIANCE SPECIFICATION HEARING

Comes now RESPONDENT, Michael Cetta, Inc. d/b/a Sparks Restaurant, pursuant to Section 102.57 of the National Labor Relations Board's Rules and Regulations, and brings the following Motion to Postpone Compliance Specification Hearing. This Motion is brought in consideration of the exigent circumstance that Respondent's trial counsel's nineteen year old son was diagnosed with cancer on January 27, 2021 and begins a series of surgeries and treatments beginning on February 9, 2021. The cancer is known to be dangerous and fast-spreading and physicians are expediting all available medical options. Respondent respectfully submits its request will not unduly prejudice any of the parties to this action. To the contrary, it will allow the parties additional time to pursue settlement opportunities, and even if unsuccessful, to obtain necessary witnesses and information to permit for a more streamlined trial in this action. Moreover, damages (with the exception of interest) are no longer accruing in this matter.

The February 22, 2021 Compliance Specification hearing date in this matter was first scheduled only one month ago - on December 29, 2020.¹ Shortly thereafter, a Settlement

¹ Notably, the undersigned has never been served with a Notice of Hearing by mail, nor electronically.

Judge, the Honorable Benjamin Green, was assigned to this matter.² On January 27, 2021, the parties engaged in preliminary Zoom settlement discussions with Judge Green. Unsurprisingly no final resolution was reached at the initial meeting, but Respondent would like the opportunity to engage in further settlement discussions, and is hopeful that such negotiations will have a high probability of success.

Due to my son's medical condition, I have indefinitely postponed a scheduled spinal procedure to permit me to focus on my son's condition. His doctors estimate the term of required initial and follow-up treatments for his condition to be approximately twelve weeks. Further complicating matters, these issues are occurring concurrently with the undersigned's father being placed in hospice care. For all these reasons, Respondent respectfully requests the the Compliance Specification hearing in this matter be rescheduled until May 10, 2021, merely eleven weeks after the originally scheduled date. This postponement will permit to address these personal issues (which I regret having to air openly) and appropriately explore potential settlement of this matter and, if unsuccessful, to fully prepare for hearing. The undersigned does not anticipate seeking any further postponement of the initial hearing date in this matter.

The Mandate from the Court of Appeals for the District of Columbia Circuit issued on August 23, 2019 (the United States Supreme Court denied certiorari on January 13, 2020), but the Compliance Specification did not issue until April 8, 2020. Counsel for the General Counsel took seven full months issue a Specification in this matter. Respondent's request for an eleven week postponement of the initial hearing date under these circumstances hardly evidences an egregious dilatory tactic.

Unfortunately, counsel for the union, Martin Milner, initially indicated the union's wholesale opposition to my request for a postponement of the Compliance Hearing, thereby necessitating a formal request. In response to my e-mail request to Mr. Allen Rose, Counsel for the General Counsel, Mr. Rose agreed only to a one month postponement of the initial hearing date, stating:

Your request describes a necessary, extended leave of absence from work, and there appears to be - quite understandably - much inherent uncertainty as to whether you can commit to your requested May 10 date. Your circumstances indicate that the likelihood of further extension requests are - understandably - -

² Nearly six months earlier, on July 15, 2020, Respondent had filed a formal motion for appointment of a Settlement Judge. That motion sat unresolved by the Board until early 2021, following a telephone conversation between the undersigned and Acting Director Dunham during which the undersigned informally renewed Respondent's request.

high. You also mention your client's request for a settlement judge; **[REDACTED PURSUANT TO FRE 408]** [B]ecause both law firms representing Respondent are large and able to shift work during an attorney's leave, the Acting General Counsel will agree to a one-month's extension of the trial date to March 22, 2020, so that Respondent's firms may accomplish that task.

While Respondent is grateful for the courtesy of a short postponement, the offer of 28 days is insufficient. To clarify, I am the ONLY counsel from my firm assigned to this matter and I am the lead and sole trial counsel (lawyers from the Freeborn firm involved only to the extent they possess institutional knowledge of this long-standing matter. I have extensive NLRB experience and have handled numerous Compliance cases such as these, while my colleagues do not. Mr. Rose's suggestion that Respondent's attorneys are interchangeable at this state of the proceeding simply is incorrect.

Conclusion

For all of the foregoing reasons, Respondent respectfully requests a postponement of the initial hearing date for the Compliance Specification Hearing May 10, 2021, at which time it will be prepared to litigate this case to completion if the parties are unable to resolve the matter prior to that date. Thank you for your respectful consideration.

Respectfully Submitted,

_____/s/_____

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Attorneys for Respondent

CERTIFICATE OF SERVICE

I certify that on February 2, 2021, I electronically filed Respondent's Motion to Postpone Compliance Specification in Case 02-CA-142626 and Case 02-CA-144852 with the National Labor Relations Board using the NLRB E-Filing System, and I hereby certify that I provided copies of the same document, via electronic mail, on the following parties:

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Dated February 2, 2021

Respectfully Submitted,

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